

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1880.—Ordered to be printed.

Mr. BAYARD, from the Committee on Finance, submitted the following

REPORT:

[To accompany bill H. R. 2797.]

*The Committee on Finance, to whom was referred the bill (H. R. 2797) for the relief of certain citizens of Lynchburgh, Va., and refunding to them taxes improperly collected from them on manufactured tobacco, having had the same under consideration, submit the following report:*

The petitioners were licensed manufacturers of tobacco, resident in Lynchburgh, Va., and had carried on that business for some time previous to May, 1868.

Lynchburgh is a well-known center of tobacco manufacture, and the attention of the revenue officials of the United States Government is especially drawn to the transactions of that locality.

In 1868 there was a tax of 32 cents per pound upon the manufacture in which these parties were engaged. By law this tax was to be *assessed upon and paid by the manufacturer*; but a practice grew up that attained the force of custom, to allow a sale of tobacco by the manufacturer *unassessed*, and, with the assent of the United States assessor, a delivery of the tobacco with the *tax unpaid* to the vendee, who assumed the payment of the tax in his contract, and who was then assessed and the tax collected from him.

Conspicuous among the tobacco manufacturers at Lynchburgh was one Seisfield, who was always—until August, 1868—regarded as a man of excellent character and high pecuniary responsibility. He was not only a manufacturer of tobacco himself, but an extensive dealer in the article; and these facts were well known to the United States revenue officials and to the public. It was a usual and customary thing for Seisfield, himself a manufacturer, to buy tobacco from other manufacturers, who sold and delivered the same to him without any precedent assessment or payment of tax, which was afterwards assessed to him; although it was known to the government officials that he was not the manufacturer, but the purchaser of the tobacco in question.

Such was the condition of business under the supervision and approval of the United States Treasury officials, and in the month of May, 1868, the petitioners sold and delivered to Seisfield, unassessed and tax unpaid, the tobacco for which taxes were subsequently exacted from them, and after such sale and delivery, both being well known to the United States officials, the legal tax was assessed upon Seisfield, who was then the owner (and was also a manufacturer), by the United States assessor, Wood, and the tax list delivered to Pendleton, the collector. But the collector had the statute before him, and declined to receive these

particular assessments made against Seisfield, on the express ground that he was not the manufacturer thereof, but that the petitioners were. His objection was made known to Seisfield and to the petitioners, and the question was referred to the Commissioner of Internal Revenue, at Washington, and the result was an order to Collector Pendleton to accept the assessments against Seisfield and proceed in the collection.

Thus the petitioners were lulled into a false security. Had the revenue officials executed the laws promptly and regularly, the tobacco would have been duly assessed to the proper persons and the tax thereon paid; but as a result of the action of the Commissioner of Internal Revenue and his subordinates, Seisfield was suffered to remain in possession of the tobacco under the assessment to him.

In August, 1868, Seisfield absconded, and suspicions against him were then first raised, and after he had fled, and by collusion with certain subordinate revenue officials, the tobacco in question had been fraudulently removed from the warehouses; then a second and new assessment was made, in September, on the petitioners, which should have been made months before, when they could and certainly would have secured the payment.

It is not stating the fact too strongly to say that it was not in the power of the petitioners to have caused themselves to be assessed instead of Seisfield. The condition of the excise laws gave practically an absolute and arbitrary power to the revenue officials.

If an erroneous assessment was made, the courts, both of the United States and of the States, were prohibited by statute from the exercise of the usual equitable and discretionary powers of injunction and restraint, in order to prevent irremediable injury to the citizen. The courts were compelled to say, in response to the plainest case of error or injustice:

We can give you no relief. You must pay the tax under protest and then sue the officer, either to recover the tax improperly assessed and collected, or for damages as a trespasser.

This was the case all over the Union, and many instances of great hardship and irremediable wrong resulted. In Virginia, excluded in 1868 from representation in Congress, the hardships of this nature were necessarily greater and more frequent.

The power of assessment was thus uncontrollable; the power of collection was summary and unavoidable, and in the cases of these petitioners it was promptly executed, and their houses and lands were immediately levied upon and threatened with forced and speedy sale at prices ruinous to the debtor.

It may be said there was "*a compromise*," and an abatement of the amount of tax at first demanded under the new and totally unexpected assessment; but to this committee it seems to have been a partial release and mitigation of a very harsh and inequitable collection.

If the legality of the tax had been in doubt, then a payment in accord and satisfaction would have been in settlement and a compromise; but the *legality* was not disputed, the facts were all well known and admitted by both parties, and on what grounds the amount of tax at first assessed and demanded was reduced does not appear. But the present application is not to readjust a settlement once made of legal rights, but an appeal to the equitable power in Congress, *ex aequo et bono*, to restore moneys which the harsh letter of the law made payable, but which the circumstances of the case, as stated, call upon Congress to restore.

In the present case the good faith and honesty of the petitioners is

fully attested by the depositions of the United States revenue agents, who made a thorough examination of the facts at the time. They have paid all taxes duly assessed to them, and would have promptly paid the taxes in question if the action of the officers of the government had not virtually prevented them, as we have above stated.

For these reasons your committee recommend the passage of House bill No. 2797.

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